plainly depend upon the true construction of the Agreement, or in other words upon the intention of the parties as expressed in, or to be implied from, the language they had used. In my judgment, the true construction of the Agreement here is that the plaintiff was required to make his final payment on 20th November 1967, irrespective of whether or not the defendant had made his final payment to Loy by that date. Contract differs from most other branches of the law of obligations in one important respect, namely, that generally speaking the parties themselves are free to make their own rules as to what shall and shall not bind them. (See Chitty on Contracts 23rd edition, page 1). The plaintiff had clearly bound himself under the Agreement to make his final payment on 20th November 1967. Once he had committed a breach of that agreement, the defendant was entitled to repudiate the contract and forfeit the deposit under clause 14 of the Agreement The deposit was more than 10 per cent of the purchase price. However, the forfeiture has not been challenged on the ground that the amount forfeited was unreasonable or excessive. Moreover, it was in evidence that the defendant had suffered damages far in excess of the amount forfeited.

For the reasons which I have stated and bearing in mind the decision of the Privy Council in *Linggi Plantation Ltd.* v. *Jagatheesan* on which the learned trial judge based his decision I would dismiss this appeal with costs.

Suffian C.J. and **Ong Hock Sim F.J.** concurred.

Appeal dismissed.

Solicitors: *Muthu & Peri; Michael Chong Ngian Fong & Co.*

RE APPLICATION BY SREEDHARAN

[O.C.J. (Abdul Hamid J.) January 18, 1974]
[Kuala Lumpur — Originating Summons No. 158 of 1973]

Industrial Law — Termination of service of employee — Letter to Minister complaining of arbitrary dismissal — Reference by Minister to Industrial Court — Application for prohibition to prohibit Industrial Court from hearing the matter and for mandamus to direct Minister to consider the matter — Industrial Relations Act, 1967, ss. 16A, 44 and 46A.

In this case the services of the applicant were terminated by his employers on the grounds that he had incited workers to stop work. He sent a letter to the Minister of Labour and Manpower complaining of arbitrary dismissal. The Minister ordered an inquiry to be held and subsequently referred the matter to the Industrial Court under section 16A(9) of the Industrial Relations Act, 1967. The applicant thereupon applied for prohibition to prohibit the Industrial Court from further hearing the case and also for an order of *mandamus* to direct the Minister to consider the matter. It was argued that the Minister had not given due consideration to the provisions of section 46A(1)(d) of the Industrial Relations Act, 1967.

Held: (1) section 46A(1)(d) of the Industrial Relations Act, 1967 did not apply in this case as the applicant was dismissed on the ground of serious misconduct for allegedly inciting the workers to stop work and not on the ground that the applicant being a member of a trade union seeking to improve working conditions was dissatisfied with such working conditions;

(2) the Minister in this case had acted *bona fide* and *intra vires* when he referred the matter to the Industrial Court pursuant to section 16A(1) of the Industrial Relations Act, 1967;

(3) the Industrial Court on receipt of the reference from the Minister under section 16A(1) of the Industrial Relations Act, 1967, had power to hear and determine the case:

(4) the application must therefore be dismissed.

Case referred to:-

(1) *P. Raman* v. *Chairman, Board of Governors, Sekolah Rendah Jenis Kebangsaan Gopeng & Anor.* (1973) 2 M.L.J. 161.

ORIGINATING SUMMONS.

G. Joseph for the applicant.

Faidz bin Mohamad Darus (Federal Counsel) for the respondent.

M. Shankar for the Chemical Company of Malaysia Berhad.

Abdul Hamid J.: This is an application by Navayan alias Sreedharan s/o O. K. Menon of 4½ Milestone, Ipoh Road, Kuala Lumpur, a production supervisor of the Chemical Company of Malaysia Berhad for an order of prohibition to prohibit the Industrial Court from further hearing Case No. 7 of 1973 and for an order of mandamus to direct the Minister of Labour and Manpower to consider the matter complained of in the light of the provision under section 46A(1)(d) of the Industrial Relations Act, 1967.

The applicant was a production supervisor of the Chemical Company of Malaysia Berhad (hereinafter referred to as "the company") before he was dismissed on November 9, 1972. In that year the applicant was also the Secretary of the Kelang Branch of the National Union of Petroleum and Chemical Industry Workers a registered trade union. On October 20, 1972 the members of the union at the company staged a walkout over a dispute which arose as a result of warning letters to two of the members of the union. The protest was organised by the workers of the company. Being the secretary of the Kelang Branch Committee the applicant was asked by the committee to convey to the company its decision and he did convey the message to the works manager of the company.

On October 24, 1972 the production manager of the company handed a letter to the applicant. The letter reads as follows —

"Mr. O.K. Sreedharan,
c/o Chlorine Plana,
C.C.M.

Dear Mr. Sreedharan,

It has been reported that on 20th October 1972 at about 3.10 p.m., you incited the workers to stop work in breach of their contract of service and as a result of which there was a general stoppage of work from 3.30 p.m. on the above date. The allegation mentioned above is a serious misconduct and attracts major punishment. You are hereby required to submit your written explanation within three days of the receipt of this letter, i.e. before 3.30 p.m. on Friday, 27th October, 1972, why disciplinary action should not be taken against you.

Should you fail to give your explanation as required within the stipulated time, it will be presumed that you have no explanation to offer and appropriate action will be taken against you.

Please acknowledge receipt of this letter.

Yours faithfully,
Sgd. Koh Ting Tiew
PRODUCTION MANAGER."

In his reply the applicant denied that he incited the workers to stop work on the date in question. On October 28, 1972 the applicant received a letter from the production manager requesting him to be present at an inquiry to be held on November 2, 1972.

On November 9, 1972 the applicant received a letter which reads —

"Mr. O.K. Sreedharan,
C.C.M.,
Padang Jawa.
Dear Sir,

This is to inform you that the Management has considered the allegation made against you and after due enquiry is fully satisfied that the allegation made against you has been proved. Since the offence committed by you is of such a serious nature, the Management has, after due deliberation, decided to terminate your service with effect from today, i.e. 9th November, 1972. All terminal payments to which you are legally entitled will be calculated and paid to you in due course.

If you are aggrieved at this decision of the Management, you may appeal under the grievance procedure which, in this case, may commence at Step IV as set out in Clause 25(c)(iv) of the collective agreement.

Yours faithfully,
Sgd. E. Sivanandan
Personnel Officer.

Copies to Group Personnel Manager
Works Manager C.C.M.
General Secretary NUP & CIW."

On November 17, 1972 the applicant wrote to the Minister of Labour and Manpower requesting his intervention. The letter reads —

"*A.R. Registered* O.K. Sreedharan,
c/o National Union of
Petroleum & Chemical
Industry Workers,
P.O. Box 57,
Petaling Jaya.
17th November, 1972,

The Hon'ble Minister
of Labour and Manpower,
Ministry of Labour,
Jalan Raja,
Kuala Lumpur.
Dear Sir,

Arbitrary Dismissal

I wish to bring to your sympathetic consideration that on 9th November 1972 the Management of Chemical Company of Malaysia Berhad had arbitrarily dismissed me from service following an enquiry that was held on the 2nd November 1972.

The alleged ground of dismissal was that I incited the workers to stop work on 20th October 1972 at about 3.30 p.m.
I was employed by the above company as a Lab Assistant Grade I on 19th September 1966 and during my service I have a good record of service from my employer. I was given a merit increment in 1969 and was promoted to Production Supervisor in January 1971.

Sir, I earnestly hope that I will be given every opportunity to be heard so that justice is not only done but seen to be done.

I remain,
Sir,
Yours obediently,
Sgd. Sreedharan.
c.c. NUPCIW."

On receipt of the letter the Minister ordered the Assistant Director of Industrial Relations to hold an enquiry. A report was subsequently received by the Minister to the effect that the matter could not be settled. As a result the Minister exercised the power vested in him under subsection (9) of section 16A of the Industrial Relations Act, 1967 (hereinafter referred to as "the relevant subsection") and referred the matter to the Industrial Court for settlement.

The applicant contended that the Minister, in making the reference, had not given due consideration to the provision of section 46A(1)(d) of the Industrial Relations Act, 1967 which reads —

"46A. (1) Notwithstanding the provisions of section 5, it shall be an offence to dismiss a workman or injure or threaten to injure him in his employment or alter his position to his prejudice, by reason of the circumstances that the workman —

(a) xxx

(b) xxx

(c) xxx

(d) being a member of a trade union which is seeking to improve working conditions, is dissatisfied with such working conditions;"

In my view section 46A(1)(d) does not apply to the present case. The applicant was dismissed on ground of serious misconduct for allegedly inciting the workers to stop work in breach of their contract of service and not on ground that the applicant being a member of a trade union seeking to improve working conditions was dissatisfied with such working conditions. It is abundantly clear that the walkout protest was staged as a result of the warning letters that were given to two of the employees of the company. The protest was in no way related to the working conditions or the improvement of the working conditions of such employees. There is therefore no question of any contravention of section 46A of the Act.

In passing it may be pertinent to refer to section 5(1)(d) of the Act which prohibits an employer to dismiss a workman by reason that the workman participates in the promotion, formation or activities of a trade union.

From the contents of the letter it is quite apparent that the applicant was not making a complaint that the company was contravening section 5(1)(d) of the Act. Participation in the promotion, formation or activities of a trade union cannot I think be construed to include incitement of the workers to stop work — an act which by reason of section 44 of the Act constitutes an offence. Furthermore it is clear that the applicant had no intention of making a complaint pursuant to section 7 of the Act, for if he had, he would have set out all the facts and circumstances constituting the complaint. Above all I fail to see how the applicant can challenge the validity of the reference by the Minister to the Industrial Court, if indeed he intended to make a complaint under section 7, as subsection (2) of that section empowers the Minister on receipt of a complaint under subsection (1) to refer such complaint to the court for hearing. The power of the court to conduct a hearing in accordance with the provisions of the Act and make such award as may be deemed necessary or appropriate is provided under subsection (3) of that section.

Counsel for the applicant submitted that this is a case under section 44 of the Act evidenced by the letters, the contents of which I have set out earlier, and as such the Industrial Court has no jurisdiction as its jurisdiction is limited to hear disputes as defined under section 2 of the Act, to mean —

"any dispute between employers and workmen, or between workmen and workmen, or between employers and employers, which is connected with the employment or non-employment or the terms of employment or the conditions of work of any person;"

In the light of the provisions of the Industrial Relations Act, 1967 it would seem to me that whilst, primarily, the functions of the Industrial Court are to hear and determine matters relating to trade disputes it is not true to say that the court's jurisdiction is solely limited to hearing such disputes. Section 26 of the Act which confers powers on the Industrial Court to hear trade disputes is itself so worded that it may reasonably be construed that the court may hear other matters that may be referred to it pursuant to some other provisions of the Act. The opening words of section 26 reads — "The court may, in relation to trade disputes before it —". A reference made by the Minister pursuant to subsection (9) of section 16A of the Act is clearly one of the cases that may be heard by the court. Such a case is in effect a dispute between a workman and the employer or employers concerning an unjust or arbitrary dismissal. Although this is not a trade dispute it is conceivably a matter which with the insertion of section 16A, is intended to be settled by either the Minister or the court on a reference made by the Minister. There is no ambiguity in the language of subsection (9) of section 16A to cast any doubt as to the intention of the legislature to confer jurisdiction on the Industrial Court to hear and determine a case referred by the Minister under the relevant subsection.

The applicant also contended that the Minister ought not to have referred the matter to the Industrial Court because there was no justification for the required reference as the facts for the dismissal as presented to the Minister disclose no justification for a reference to be made within the ambit of the relevant subsection. The applicant argued that he did not make the representation to the Minister under section 16(A)(1) of the Act. If indeed that was so it is for the applicant to show the specific provision of the Act he is relying upon. I do not see any merit in his argument. It is crystal clear that the applicant's main complaint was that he was arbitrarily dismissed by the company and for that reason he made the representation with a request that he be given an opportunity to be heard. The Minister quite rightly treated the applicant's representation as a complaint made pursuant to section 16A of the Act.

In my view the main issue in this case is whether firstly, the Minister had acted *bona fide* and *intra vires* when he referred the matter to the Industrial Court pursuant to the relevant subsection, and secondly, the Industrial Court on receipt of the reference from the Minister under the relevant subsection, has power to hear and determine the case.

In my judgment the Minister acted *bona fide* and *intra vires*. The Minister proceeded correctly when, on receipt of the complaint. appointed the Assistant Director of Industrial Relations to inquire into the alleged arbitrary dismissal. As the matter could not be settled and presumably after he considered it expedient so to do decided in exercise of his discretionary power to refer the matter for settlement by the Industrial Court. It is pertinent to observe that on a representation made by a workman under subsection (1) of section 16A of the Act, the Minister is empowered to make a decision although he may before making a decision require the Commissioner to hold an enquiry into the dismissal and report whether in his opinion dismissal is without just cause or excuse. A decision made by the Minister is final and conclusive and shall not be challenged in any court or in a court established under the Act. [See *P. Raman* v. *Chairman, Board of Governors, Sekolah Rendah Jenis Kebangsaan Gopeng and Another*[1] (F.C.)].

As regards the court's jurisdiction it is clear and indeed it is the only construction that may reasonably be placed upon the relevant subsection that the Industrial Court is conferred by the Act the jurisdiction to hear and make a decision on a case of dismissal referred by the Minister pursuant to the relevant subsection.

In my judgment just as the Minister is required to make a decision on a representation made to him, the court is equally required to inquire into and decide. In this respect I am entirely in agreement with the submission made by Mr. Shankar counsel for the company that the true meaning of the word "settlement" in section 16A must be construed in the manner the court is expected to fulfil its function under the Act and the Rules.

The law is silent as to the procedure to be followed by the Industrial Court when determining a reference made pursuant to the relevant subsection. Nonetheless I feel that in the absence of any provision to the contrary the court should and it is indeed entitled to apply the procedure laid down under the Industrial Court Rules, 1967 in determining the case under reference. The word "case" is defined under Rule 2 of the said Rules meaning "any trade dispute or *matter* referred to the court by the Minister and any matter required to be determined or considered by the court under the provisions of the Act." As for the Minister's decision the Act provides that it shall be final and conclusive. In my judgment the effect of the court's decision in such a case must also be final and conclusive and shall not be open to challenge or called in question in any court of law.

It is my considered judgment that for reasons that I have stated the applicant has failed to establish any merit in his application. I do not therefore see any reason why this court should make an order prohibiting the Industrial Court from further hearing the matter, and I do not also see any valid reason to justify this court making an order of mandamus to direct the Minister of Labour and Manpower to consider the matter complained of in the light of section 46A(1)(d) of the Industrial Relations Act, 1967.

This application is therefore dismissed with costs. The costs shall be paid by the applicant to each defendant.

Application dismissed.

Solicitors: *Lawrence & Joseph; Shearn Delamore & Co.*